

# **CITY OF HORSESHOE BAY**

## **ORDINANCE NO. ORD**

### **JUNKED VEHICLE ORDINANCE**

**AN ORDINANCE ENACTING NEW REGULATIONS AND PROCEDURES REGARDING JUNKED VEHICLES AND PROVIDING FOR FINDINGS OF FACT; POPULAR NAME; DEFINITIONS; DECLARATION OF PUBLIC NUISANCE; COMPLAINT AND INVESTIGATION PROCEDURES; NOTICE FOR REMOVAL AND PUBLIC HEARING; ORDER FOR REMOVAL; DUTY OF OWNER OR OCCUPANT OF PREMISES; VEHICLES NOT TO BE MADE OPERABLE; NOTICE TO TEXAS DEPARTMENT OF TRANSPORTATION; EXEMPTIONS; ADMINISTRATION; REMOVAL OF VEHICLE; SALE OR DISPOSAL OF VEHICLE; ENFORCEMENT; MAXIMUM CRIMINAL FINE OF \$200.00 OR CIVIL PENALTY OF \$100.00 FOR EACH VIOLATION; REPEAL; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE AND MEETING.**

**WHEREAS**, the City Council of the City of Horseshoe Bay ("City Council") seeks to promote the health, safety and general welfare of the City of Horseshoe Bay ("City") by preventing death, injuries, property damage and urban blight within the City limits; and

**WHEREAS**, the City Council finds that junked vehicles are conducive to the stagnation of water and promulgation of weeds, thus contributing to infestations of insects, vermin and other threats to the public; and

**WHEREAS**, the City Council finds that the existence of junked vehicles within the City limits will result in vandalism, fire hazards, hazards to the health and safety of minors and the production of urban blight; and

**WHEREAS**, the City Council finds that the existence of junked vehicles constitutes a public nuisance that poses a significant and immediate threat to the health, safety and welfare of the citizens of the City and their property; and

**WHEREAS**, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS**, pursuant to Chapter 217 of the Texas Local Government Code, the City has the authority to define what constitutes a nuisance and abate in any manner deemed expedient any nuisance that may injure or affect the public health or comfort; and

**WHEREAS**, pursuant to Chapter 683 of the Texas Transportation Code, a junked vehicle, including a part thereof, that is visible from a public place or public right-of-way can constitute a public nuisance and the City Council has authority to abate and remove such a nuisance through certain legal and/or administrative proceedings; and

**WHEREAS**, the City Council finds that it is necessary and proper for the good government, peace or order of the City of Horseshoe Bay to adopt an ordinance regulating junked vehicles that are public nuisances and including procedures for the abatement and removal of the public nuisances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:**

## **I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

## **II. DEFINITIONS**

Words and phrases used in this ordinance shall have the meanings set forth in this section. Words and phrases which are not defined in this ordinance but are defined in other ordinances of the City of Horseshoe Bay shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this ordinance.

*Antique vehicle* means a passenger car or truck that is at least 25 years old.

*City* means the City of Horseshoe Bay, Texas, an incorporated municipality located in Llano County and Burnet County, Texas.

*Demolisher* means any person whose business is to convert the motor vehicle into processed scrap or scrap metal or otherwise to wreck or dismantle motor vehicles.

*Junked Vehicle* means a vehicle as defined in the Texas Transportation Code, Section 683.071, as amended, that is self-propelled and:

- (a) Does not have lawfully attached to it:
  - (1) An unexpired license plate; or
  - (2) A valid motor vehicle inspection certificate; and

(b) Is:

- (1) Wrecked, dismantled or partially dismantled, or discarded; or
- (2) Inoperable and has remained inoperable for more than:
  - (A) Seventy-two (72) consecutive hours, if the vehicle is on public property; or
  - (B) Thirty (30) consecutive days, if the vehicle is on private property.

*Motor vehicle collector* means a person who:

- (1) owns one or more antique or special interest vehicles; and
- (2) acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

*Officer* means any person designated by the City Council as authorized to investigate and enforce suspected violations of City ordinances or regulations. The term may include the Chief of Police, a police officer, a City Code Enforcement Officer, or another person so designated.

*Special interest vehicle* means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

### **III. PUBLIC NUISANCE**

Junked Vehicles, including parts of a junked vehicle, that are visible from a public place or public right-of-way, are detrimental to the safety and welfare of the general public; tend to reduce the value of private property; invite vandalism; create fire hazards; constitute an attractive nuisance creating a hazard to the health and safety of minors; and are detrimental to the economic welfare of the City by producing urban blight which is adverse to the maintenance and continuing development of the City. As such, these vehicles are, therefore, declared to be a public nuisance.

### **IV. NUISANCE PROHIBITED**

It shall be unlawful for any person, individual, company or corporation to maintain, possess, or locate any junked vehicle or parts or portions thereof, within the City of Horseshoe Bay, in violation of this Ordinance.

## **V. COMPLAINT AND INVESTIGATION**

(a) Any person may file a complaint alleging the existence of a junked vehicle, or part thereof, as a public nuisance in the City. The complaint must:

- (1) Be in writing;
- (2) Provide sufficient details about the alleged nuisance so that its location can be determined;
- (3) Be signed by the complainant; and
- (4) Be filed with the City Secretary, Municipal Court Clerk, Police Chief, Police Officer, or City Code Enforcement Officer.

(b) On his/her own knowledge or on the basis of a written complaint, an Officer shall investigate the alleged existence of a junked vehicle, or part thereof, on private or public property or a public right-of-way within the City.

(c) The Officer may enter private property where the alleged junked vehicle, or part thereof, is located in order to examine the public nuisance, to obtain information to identify the nuisance and to remove or direct removal of the nuisance.

## **VI. NOTICE AND HEARING**

(a) If it is determined by the Officer that a nuisance, as defined herein, exists in the City, the Officer shall give notice or cause notice to be given in writing. The notice shall state: the nature of the public nuisance; that the nuisance must be removed and abated within ten (10) days; and further that a request for a hearing must be made within ten (10) days of receipt of the notice. The notice must be personally delivered or mailed, by certified or registered mail, return receipt requested to:

- (1) The last known registered owner of the nuisance;
- (2) Each lien holder of record of the nuisance; and
- (3) The owner or occupant of:
  - (A) The property on which the nuisance is located; or
  - (B) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

**(b)** The notice must state that:

(1) The nuisance must be abated and removed not later than the tenth (10<sup>th</sup>) day after the date on which the notice was personally delivered or mailed; and

(2) Any request for a hearing must be made before that ten (10) day period expires.

**(c)** If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance, or if the owner is located by other means, hand delivered.

**(d)** If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh (11<sup>th</sup>) day after the date of the return.

**(e)** A public hearing must be held, prior to the removal of the vehicle or the part thereof as a public nuisance, before the Municipal Court Judge, when such hearing is requested by the owner or occupant of the premises on which said vehicle is located, not earlier than the eleventh (11<sup>th</sup>) day after service of notice to abate the nuisance. At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:

(1) Description;

(2) Vehicle identification number; and

(3) License plate number.

**(f)** If, after written notice has been given, as described in this Section of this Ordinance, and continuing through the hearing, the owner relocates the junked vehicle, or a part thereof, to another location in the City of Horseshoe Bay, Texas the relocation has no effect on the hearing if the vehicle, or a part thereof, constitutes a public nuisance at the new location.

## **VIII. ORDER BY JUDGE**

**(a)** After the hearing is held by a Municipal Court Judge as herein provided, if the Judge finds that such a nuisance as herein defined exists, the Judge shall order the owner or occupant of the premises on which said vehicle is located to remove such junked vehicle within ten (10) days after said order is given to such owner or occupant of the premises on which said vehicle is located.

**(b)** It shall be unlawful and a violation of this Ordinance for any such person to whom such order is given to fail or refuse to comply therewith to remove such junked vehicle within the time provided by said order.

## **IX. DUTY OF OWNER OR OCCUPANT**

In the event the owner or occupant of the premises does not request a hearing, as herein provided, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten (10) days after the date of the receipt of such notice.

## **X. VEHICLES NOT TO BE MADE OPERABLE**

After a vehicle has been removed in accordance with or under the terms and provisions of this Ordinance, it shall not be reconstructed or made operable.

## **XI. NOTICE TO TXDOT**

Notice shall be given by the Municipal Court Judge to the Texas Department of Transportation ("TXDOT") within five (5) days after the date of removal identifying the vehicle or part thereof.

## **XII. EXEMPTIONS**

This Ordinance shall not apply to a vehicle or vehicle part:

- (a) That is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
- (b) That is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
  - (1) Maintained in an orderly manner;
  - (2) Not a health hazard; and
  - (3) Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

## **XIII. ADMINISTRATION**

The administration of this Ordinance shall be by regularly salaried, full-time employees of the City of Horseshoe Bay, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person. Investigations and enforcement actions may be initiated under this ordinance by any Officer, without regard to the Officer's payroll status, provided that the Officer is supervised by a regularly salaried, full-time employee of the City.

#### **XIV. REMOVAL**

(a) Within ten (10) days after notice has been delivered to the owner or occupant of the premises on which a junked vehicle is located if a hearing is not requested, or if a hearing is requested, within ten (10) days after an order requiring the removal of such junked vehicle has been served upon or delivered to the owner or occupant of the premises on which said vehicle is located, the Officer, may if said nuisance has not been abated, remove or cause to be removed the vehicle which was the subject of such notice to a scrap yard, or by the sale to a demolisher for the highest bid or offer received therefore, outside of the City.

(b) Such vehicle shall be stored in such storage area for a period of not less than ten (10) days during which period any party owning or claiming any right, title or interest therein shall be entitled to claim possession of same by the payment to the City of Horseshoe Bay, Texas, the actual cost to the City of abating such nuisance. The Officer may in such cases, if he deems it necessary, require such person to post bond of not more than \$50.00 nor less than \$25.00, conditioned that such person will not use said vehicle to create another nuisance in the City of Horseshoe Bay.

#### **XV. SALE OR DISPOSAL**

(a) If there is not a bid or offer for the junked vehicle, the Officer may dispose of same by causing it to be demolished or removed by a demolisher who is willing to do so for the benefit of the junk or parts he can salvage.

(b) Out of the proceeds of same the Officer shall pay for the cost of removal and storage and the balance, if any, shall be paid to the person entitled thereto (the City, the owner or lienholder).

#### **XVI. ENFORCEMENT**

(a) The City of Horseshoe Bay, Texas, shall have the power to administer and enforce provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

(b) Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two hundred dollars (\$200.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

(c) Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;

(2) A civil penalty up to one hundred dollars ( \$100.00) a day when it is shown that the defendant was actually notified of the provisions of this Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and

(3) Other available relief.

#### **XVII. EFFECTIVE DATE**

This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

#### **XVIII. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

#### **XIV. SEVERABILITY**

Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

#### **XIII. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**ADOPTED AND APPROVED** on this the 27<sup>th</sup> day of May, 2008 by a vote of the City Council of the City of Horseshoe Bay, Texas.

**CITY OF HORSESHOE BAY, TEXAS**

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**Robert W. Lambert, Mayor**

**Attest:**

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**Teresa L. Moore, City Secretary**